

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROY MITCHELL,

Plaintiff,

v.

STATE OF WISCONSIN DEPARTMENT
OF HEALTH SERVICES,

Defendant.

ORDER

Case No. 15-cv-426-wmc

Pro se plaintiff Roy Mitchell has filed a proposed complaint under 42 U.S.C. § 1983. Plaintiff is a transgender female. She claims that the State of Wisconsin Department of Health Services violates the Eighth and Fourteenth Amendment rights of individuals diagnosed with gender dysphoria by specifically excluding hormone therapy “associated with transsexual surgery or medically unnecessary alteration of sexual anatomy or characteristics” from coverage reimbursement by the State of Wisconsin. Wis. Admin Code § 107.03(23). Having determined that Mitchell may proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, and that she has made her partial payment, the complaint is ready for screening under 28 U.S.C. § 1915A.

In addressing any pro se litigant’s complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this generous standard, however, Mitchell’s complaint must be dismissed for lack of subject matter jurisdiction because § 107.03(23) has been construed to allow for coverage of the very hormone therapy that Mitchell seeks.

ALLEGATIONS OF FACT¹

Before April 2, 2015, Mitchell's mental health providers recommended hormone therapy to treat her gender dysphoria. (Dkt. #1-4.) Nevertheless, on that date, Mitchell's HMO provider, Group Health Cooperative ("GHC"), denied her coverage for this treatment. As support, GHC cited Wis. Admin. Code § 107.03(23), which explicitly denies reimbursement for certain services, including "[d]rugs, including hormone therapy, associated with transsexual surgery or medically unnecessary alteration of sexual anatomy." (Dkt. 1-4, at 4.)

Mitchell appealed GHC's coverage decision to the State of Wisconsin Division of Hearings and Appeals. On July 1, 2015, an administrative law judge for the Wisconsin Division of Hearings and Appeals held that Mitchell "*is* entitled to coverage for [her] hormone therapy because the requested hormone therapy is not associated with transsexual surgery or alteration of sexual anatomy or characteristics." (*Id.* at 2 (emphasis added).) Mitchell does not allege that she has subsequently been denied coverage by GHC, nor that the Wisconsin Department of Health Services (or any other State of Wisconsin agency or employee) took any further action related to her appeal. Instead, she alleges generally that the application of Wis. Admin. Code § 107.03(23) violates the constitutional rights of "human beings."

OPINION

Plaintiff's complaint is deficient for lack of subject matter jurisdiction. Article III of the United States Constitution limits the exercise of federal judicial power to the resolution

¹ For purposes of this order, the court accepts all factual allegations as true and adopts all reasonable inferences in Mitchell's favor.

of actual “cases and controversies.” *See* U.S. Const. art. III, § 2. To meet the case-or-controversy requirement, a plaintiff must have standing. An essential element of standing requires a plaintiff to demonstrate that she has personally suffered an “injury in fact,” meaning an impingement on a legally-recognized interest that is concrete and particularized, actual or imminent, not conjectural or hypothetical. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180–81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

As noted above, Mitchell does not allege that the defendant denied her the recommended hormone therapy treatment. Rather, the decision of the Division of Hearings and Appeals shows that GHC has been ordered to provide coverage for her hormone therapy.² Accordingly, she has alleged no facts suggesting that she *personally* has suffered an injury.

Plaintiff indirectly acknowledges as much by referring in her complaint to “human beings” and “persons” whose rights have been violated by Wis. Admin. Code. § 107.03(23), and failing to request relief for herself. Accordingly, it appears that plaintiff would like to represent the rights of all individuals that may be denied coverage under Wis. Admin. Code § 107.03(23).

² Plaintiff filed numerous, additional materials since bringing her complaint, but none support this court’s exercise of subject matter jurisdiction. For example, Mitchell filed motions to amend, including one to amend her complaint to add new claims and defendants, but this does not change the result here, as plaintiff’s proposed defendants are all employees or officials with the State of Wisconsin, and she does not allege any additional facts to suggest that she is being denied coverage for her hormone therapy treatment or that she suffered any other injury. Plaintiff’s other filings and supplements (articles about transgender individuals, Wisconsin statutes and her medical records) are likewise inapposite because they do not establish that Mitchell suffered an injury. Instead, they appear intended to persuade the court of the validity of her claim on behalf of other individuals.

However noble her intent, as a *pro se* litigant, Mitchell cannot represent the cause of individuals that may be affected by § 107.03(23). For one, she does not name any of these other individuals, so it is impossible to determine whether such individuals themselves have a claim for review. Even if she had named other individuals that she would like to represent, “in all courts of the United States the parties may plead and conduct their own cases personally or by counsel.” 28 U.S.C. § 1654. Consequently, “[n]ormally, representative parties . . . may not conduct litigation *pro se*; pleadings may be brought before the court only by parties or their attorney.” *Elustra v. Mineo*, 595 F.3d 699, 704 (7th Cir. 2010). Given the rule that a litigant may not sue *pro se* on behalf of representative parties, Mitchell’s representative claims fail for lack of standing.

ORDER

IT IS ORDERED that Plaintiff Roy Mitchell’s Motion for Leave to Proceed (dkt. # 2) is DENIED and this matter is DISMISSED for lack of subject matter jurisdiction.

Entered this 3rd day of November, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge